FILED
MAR 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1277

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

STANLEY V. TUCKER,

Petitioner,

—v.—

CONNECTICUT NATIONAL BANK, NEIL E. ATLAS, BOURKE G. SPELLACY, and UPDIKE, KELLY & SPELLACY, P.C.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

UPDIKE, KELLY & SPELLACY, P.C.
Attorneys for Respondents
One State Street
Hartford, Connecticut 06103
(203) 548-2600

BOURKE G. SPELLACY, ESQ.
KAREN P. BLADO, ESQ.*
MORTON H. LIBBEY, JR., ESQ.

* *Counsel of Record*

QUESTIONS PRESENTED FOR REVIEW

1. Does the United States District Court for the District of Connecticut have subject matter jurisdiction to review the final decision of the Connecticut Supreme Court?

2. Does the petitioner have standing to challenge the facial validity of rent receivership court rules when the complaint states that petitioner no longer owns the property which could be exposed to the rent receivership rules?

3. When the court concludes that plaintiff lacks standing and the court has no subject matter jurisdiction over plaintiff's claims, must the court offer to let the plaintiff amend his complaint?*

---

* The respondents do not consider the petitioner's first two issues to be properly before this Court because neither the District Court nor the Court of Appeals reached the substantive questions of whether Tucker had any defenses of which he had no notice when the Connecticut Superior Court appointed a rent receiver and of whether Connecticut Practice Book §§ 504-510 are violative of due process on their face.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iv
LOWER COURT CITATIONS	viii
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	viii
STATEMENT OF THE FACTS	2
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. TUCKER HAS NOT PRESENTED SPECIAL AND IMPORTANT REASONS SUFFICIENT TO WARRANT THIS COURT'S REVIEW OF HIS CASE	6
A. The Second Circuit Decision Does Not Conflict with Other Circuits	8
B. The Second Circuit Decision Does Not Conflict with the Connecticut Supreme Court	10
C. The Lower Court Decisions Were Ordinary	11
D. No Federal Statute Is In Issue	12
II. THE PETITIONER HAS FULLY LITIGATED THE CONSTITUTIONALITY OF CONNECTICUT PRACTICE BOOK SECTIONS 504-510	13

PAGE

III. THE *ROOKER-FELDMAN* ABSTENTION DOCTRINE PRECLUDED SUBJECT MATTER JURISDICTION TO THE UNITED STATES DISTRICT COURT 17

CONCLUSION 21

TABLE OF AUTHORITIES

Cases: PAGE

106 Mile Transport Associates v. Koch, 656 F. Supp. 1474 (S.D.N.Y. 1987) 16

Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) 15

Allen v. Wright, 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984) 16

American Disposal Services, Inc. v. O'Brien, 1988 U.S. App. LEXIS 1805, slip opinion, p. 8 (2d Cir. Feb. 8, 1988)..... 19

Burritt Mut. Sav. Bank of New Britain v. Tucker, 183 Conn. 369, 439 A.2d 396 (1981) 9

City of Hartford v. Stanley Tucker, et al., 174 Conn. 792, 381 A.2d 1369 (1978) 9

Cromwell v. County of Sac, 94 U.S. 351, 24 L.Ed. 195 (1876) 14

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)....12, 17, 18, 19, 20

Fermont Division v. Smith, 178 Conn. 393, 423 A.2d 80 (1979) 13

Friarton Estates Corp. v. City of New York, 681 F.2d 150 (2d Cir. 1982) 14, 15

Ham v. Smith, 653 F.2d 628 (D.C. Cir. 1981)..... 8

Hartford Federal Savings & Loan Ass'n v. Tucker, 181 Conn. 607, 436 A.2d 1259 (1980) 9

PAGE

Hartford Federal Savings & Loan Ass'n v. Tucker, 196 Conn. 172, 491 A.2d 1084, *cert. denied*, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed.2d 258 (1985) 5, 9, 10, 13, 14, 17

Hartford National Bank & Trust Co. v. Tucker, 178 Conn. 472, 423 A.2d 141 (1979), *cert. denied*, 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980) (*Tucker* I).....2, 9, 12, 17

Hartford National Bank & Trust Co. v. Tucker, 181 Conn. 296, 435 A.2d 350, *cert. denied*, 449 U.S. 956, 101 S.Ct. 363, 66 L.Ed.2d 1211 (1980) (*Tucker* II)... 3, 9, 12, 17

Hartford National Bank & Trust Co. v. Tucker, 195 Conn. 218, 487 A.2d 528, *cert. denied*, 474 U.S. 845, 106 S.Ct. 135, 88 L.Ed.2d 111 (1985) (*Tucker* III)...*passim*

Hartford National Bank and Trust Co. v. Tucker, 174 Conn. 759, 378 A.2d 1079 (1977)..... 2

Hartford National Bank and Trust Co. v. Tucker, No. 25761 (Jud. Dist. Litchfield), *aff'd*, 172 Conn. 675, 364 A.2d 643 (1976), *cert. denied*, 430 U.S. 932, 97 S.Ct. 1554, 51 L.Ed.2d 777 (1976)..... 2

Hudson v. Harvey, 412 F.2d 1091 (D.C. Cir. 1968).... 9

Husti v. Zuckerman Property Enterprises Ltd., 199 Conn. 557, 508 A.2d 735 (1986)..... 11

Iowa Central Ry. Co. v. Iowa, 160 U.S. 389, 16 S.Ct. 344, 40 L.Ed 467 (1896)..... 14

Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621 (9th Cir. 1988)..... 8

Mechanics Sav. Bank v. Tucker, 178 Conn. 640, 425 A.2d 124 (1979)..... 9

PAGE

Migra v. Warren City School District Board of Education, 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1983), *aff'g*, 703 F.2d 564 (6th Cir. 1982) 15

Mullane v. Central Hanover Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) 15

Nelson v. Regan, 560 F. Supp. 1101 (D. Conn. 1983), *aff'd on other grounds*, 731 F.2d 105 (2d Cir.), *cert. denied*, 469 U.S. 853, 105 S.Ct. 175, 83 L.Ed.2d 110 (1984) 15, 16

Northeast Bancorp, Inc. v. Woolf, 576 F. Supp. 1225, (D. Conn. 1983), *aff'd*, 742 F.2d 1439 (2d Cir. 1984) 17

Rooker v. Fidelity Trust Company, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) 18, 19, 20

Silver v. Kingston Realty Corp., 114 Conn. 349, 158 A. 889 (1932) 16

Texaco, Inc. v. Pennzoil Co., 784 F.2d 1133 (2d Cir. 1986), *rev'd on other grounds*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) 18, 19, 20

Tucker v. American Insurance Company, 3 Conn. App. 397, 488 A.2d 1278, *cert. dismissed*, 196 Conn. 802 (1985) 10

Tucker v. Connecticut Ins. Placement Facility, 192 Conn. 653, 473 A.2d 1210 (1984) 9

Tucker v. Helco, 13 Conn. App. 825, 539 A.2d 148, *cert. denied*, 207 Conn. 811, 541 A.2d 1241 (1988) 10

Tucker v. Northeast Savings, F.A., 675 F. Supp. 763 (D. Conn. 1987), *summarily affirmed*, 849 F.2d 1468 (2d Cir. 1988), *petition for cert. filed*, No. 88-719 (U.S. Nov. 7, 1988) 4, 7, 16

PAGE

Tucker v. Pinney, 8 Conn. L. Trib. No. 51 p.15 (1982) *aff'd* 3 Conn. App. 678, 490 A.2d 1032, *cert. denied*, 197 Conn. 804, 499 A.2d 56 (1985) 10

United States v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588 (1876) 13

Williams v. Robinson, 16 Conn. 517 (1844) 16

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) 19, 20

Statutes and Rules:

28 U.S.C. § 1254(1) 6

28 U.S.C. § 1257 .....18, 19

42 U.S.C. § 1983 .....14, 17

Fed. R. Civ. P. 12(b) 3, 8, 11

Fed. R. Civ. P. 56 ..... 9, 11

United States Supreme Court Rule 17.1 .....5, 6, 11, 12

Connecticut Practice Book §§ 504-510 .....*passim*

LOWER COURT CITATIONS

Stanley V. Tucker v. Connecticut National Bank, et al., Civ. No. H-87-635 (AHN) (April 23, 1988)

Stanley V. Tucker v. Connecticut National Bank, et al., No. 88-7590 (2d Cir. Nov. 2, 1988)

"It is hereby ordered that the motion [to dismiss and for summary affirmance] be and it hereby is granted to the extent of affirming the judgment of the district court."

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Supreme Court Rule 17.1

See text at page 6 of this brief in opposition where Rule is fully reproduced.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1257

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the

Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Fed R. Civ. P. 12(b)

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim

upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R. Civ. P. 56(b)

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1277

STANLEY V. TUCKER,

Petitioner,

—v.—

CONNECTICUT NATIONAL BANK, NEIL E. ATLAS, BOURKE G. SPELLACY, and UPDIKE, KELLY & SPELLACY, P.C.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE FACTS

This case has a protracted factual and litigation history.[1] In 1966, Hartford National Bank[2] entered into a note and mortgage with Stanley V. Tucker for an apartment building located in Torrington, Connecticut. In 1976, Neil E. Atlas, Esq. was retained by Hartford National Bank to commence a foreclosure action following default by Tucker on his note obligations. During the long course of the foreclosure proceedings the court appointed rent receivers for the property and heard numerous motions by Tucker seeking to discharge the receivers and challenging the conduct of the receivership.

Judgment of foreclosure was rendered in favor of the bank. *Hartford National Bank and Trust Co. v. Tucker*, No. 25761 (Jud. Dist. Litchfield), *aff'd*, 172 Conn. 675, 364 A.2d 643 (1976). Tucker has appealed this case five times to the Connecticut Supreme Court, along with three unsuccessful attempts to obtain a writ of certiorari to the United States Supreme Court. Tucker's first appeal to the Connecticut Supreme Court was dismissed. *Hartford National Bank and Trust Co. v. Tucker*, 172 Conn. 675, 364 A.2d 643 (1976). His second appeal was also dismissed. *Hartford National Bank and Trust Co. v. Tucker*, 174 Conn. 759, 378 A.2d 1079 (1977). Tucker's third appeal affirmed the trial court's judgment of foreclosure and remanded to set a new date for public sale. *Hartford National Bank & Trust Co. v. Tucker*, 178 Conn. 472, 423 A.2d 141 (1979), *cert. denied*, 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980) (*Tucker I*). In Tucker's fourth appeal, the Connecticut Supreme Court set aside a sale made during the appeal and

---

1 A succinct history of this case is set forth in *Hartford National Bank and Trust Company v. Stanley Tucker*, 195 Conn. 218, 220, 487 A.2d 528, *cert. denied*, 474 U.S. 845, 106 S.Ct. 135, 88 L.Ed.2d 111 (1985).

2 The present defendant, Connecticut National Bank, is the successor of Hartford National Bank. Connecticut National Bank is a wholly owned subsidiary of Hartford National Corporation, a Delaware corporation which is a wholly owned subsidiary of Shawmut National Corporation, a Delaware corporation.

remanded for a new sale date. *Hartford National Bank & Trust Co. v. Tucker*, 181 Conn. 296, 435 A.2d 350, *cert. denied*, 449 U.S. 956, 101 S.Ct. 363, 66 L.Ed.2d 1221 (1980) (*Tucker II*). The fifth time Tucker appealed to the Connecticut Supreme Court, the court specifically approved the conduct of the rent receivership and remanded for a new sale date. *Hartford National Bank & Trust Co. v. Tucker*, 195 Conn. 218, 487 A.2d 528, *cert. denied*, 474 U.S. 845, 106 S.Ct. 135, 88 L.Ed.2d 111 (1985) (*Tucker III*).

Upon remand from *Tucker III*, prior to a court-ordered sale, Tucker sold the property which was the subject of the litigation for Eight Hundred Forty Thousand Dollars ($840,000.00). Complaint ¶ 17; Second Circuit Joint Appendix A-7.[3] The sale was approved by the Connecticut Superior Court and the proceeds distributed.

STATEMENT OF THE CASE

The petitioner filed suit against Connecticut National Bank, Neil E. Atlas, Bourke G. Spellacy, and Updike, Kelly & Spellacy, P.C.[4] on or about August 12, 1987, seeking "declaratory relief and damages."[5] Complaint ¶ 1; A-1. The respondents filed a motion to dismiss on or about September 4, 1987, on the grounds of *res judicata* and collateral estoppel. On April 27, 1988, the United States District Court for the District of Connecticut, The Honorable Alan H. Nevas, granted "in its entirety the defendants' Rule 12(b)(6), Fed. R. Civ. P. motion to dismiss." Memorandum of Decision 9; A-55. The court held

---

3 The "A" citations are to the Appendix filed by the petitioner with the Second Circuit Court of Appeals on September 8, 1988. The petitioner did not file a detailed appendix of the pleadings with the United States Supreme Court.

4 Neil E. Atlas, Esq., Bourke G. Spellacy, Esq. and Updike, Kelly & Spellacy, P.C. were sued only because each represented Connecticut National Bank against the petitioner in the foreclosure actions.

5 Contrary to the suggestions of the petitioner, he never moved for permission to file an amendment to his complaint. Compare Petition p.3.

that "those portions of the complaint supporting Tucker's claim for relief from the effect of the state court judgments must be dismissed for lack of subject matter jurisdiction." Memorandum of Decision 7; A-53 (relying on the similar dismissal in *Tucker v. Northeast Savings, F.A.*, 675 F. Supp. 763 (D. Conn. 1987), *summarily aff'd*, 849 F.2d 1468 (2d Cir. 1988), *petition for cert. filed*, No. 88-719 (U.S. Nov. 7, 1988). The court further concluded that "because there is no allegation that prospective application of [Connecticut Practice Book] sections 504-510 will cause the plaintiff redressable harm, Tucker lacks the 'distinct and palpable injury' that is a necessary underpinning for standing to pursue a facial challenge to the rent receiver procedures." Memorandum of Decision 9; A-55 (footnote and citations omitted). The petitioner moved to vacate or reverse the judgment pursuant to Fed. R. Civ. P. 60(b) on or about May 25, 1988. A-56. The respondent opposed the motion and by decision dated June 20, 1988, the motion was denied. A-57. On June 23, 1988, the petitioner filed a motion for rehearing of the denial of his Rule 60(b) motion; the motion for rehearing was denied on June 28, 1988. A-57.

On July 6, 1988, the petitioner filed an appeal with the United States Court of Appeals for the Second Circuit. The respondent moved for dismissal and summary affirmance on September 22, 1988, which motion was granted by the Second Circuit Court of Appeals on November 2, 1988. The Court of Appeals for the Second Circuit also denied on November 2, 1988, Tucker's motion to certify the case for further appeal. Tucker then petitioned this Honorable Court for a writ of certiorari.

SUMMARY OF ARGUMENT

Plaintiff's Petition for a Writ of Certiorari seeks review of the decision of the United States Court of Appeals for the Second Circuit summarily affirming the dismissal of this case by the United States District Court for the District of Connecticut. The District Court correctly held that it had no subject matter jurisdiction to review the final judgment of a state court in the

underlying foreclosure action and the rent receiverships ancillary to the foreclosure. Once the state court avenues were exhausted, the decisions were *res judicata*. The petitioner had a "full opportunity to present his claims" during the nine year state court action. *Hartford National Bank & Trust Co. v. Tucker*, 195 Conn. 218, 224, 487 A.2d 528 (1985), *cert. denied*, 474 U.S. 845, 106 S.Ct. 135, 88 L.Ed.2d 258 (1985). The District Court also held that the petitioner, having sold the property at issue, lacked standing in that he failed to demonstrate any prospective losses that would satisfy the standing requirement to challenge the facial validity of the Connecticut Practice Book rules on receiverships. The Connecticut Supreme Court has previously held that those rules accorded the petitioner due process of law and are constitutional both on their face and as applied by the Connecticut Superior Court. *Hartford Federal Savings & Loan Ass'n v. Tucker*, 196 Conn. 172, 491 A.2d 1084, *cert. denied*, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed.2d 111 (1985).

Nonreview of state court decisions by the United States District Court and actual injury as a requisite for standing are long established principles which present no conflict with other Circuits nor with the Connecticut Supreme Court nor with prior decisions of this Court. Petitioner's suggestion that other Circuits would have permitted him to amend his complaint ignores the facts of those cases and the fact that petitioner has had his (many) days in court on the issues he raises in this lawsuit. The interpretation of Connecticut Practice Book §§ 504-510 on rent receiverships is not an important question of federal law in great need of settlement by this Court. Petitioner has identified no misconduct or aberrant procedure by the lower courts which would warrant exercise of this Court's supervisory powers.

For all of these reasons the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit should be denied.

ARGUMENT

I. TUCKER HAS NOT PRESENTED SPECIAL AND IMPORTANT REASONS SUFFICIENT TO WARRANT THIS COURT'S REVIEW OF HIS CASE

Tucker has petitioned for a writ of certiorari to appeal the decision of the Second Circuit Court of Appeals. He claims jurisdiction pursuant to 28 U.S.C. § 1254(1). Supreme Court Rule 17.1 states as follows:

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

No such "special and important" reasons exist. Tucker's complaint alleged that the Superior Court lacked jurisdiction under Connecticut General Statutes § 51-14 to adopt Connecticut Practice Book §§ 504-510. Complaint ¶ 10; A-4. He also

alleged that §§ 504-510 do not give notice of defenses nor provide for a "meaningful hearing" where a property owner can challenge the appointment of a receiver, thus depriving the equitable property owner of due process. Complaint ¶ 11; A-5. Tucker further alleged that Connecticut Practice Book §§ 504-510 were vague and lacking in standards to guide a Superior Court judge in making an appointment of a receiver. Complaint ¶ 12; A-5.

The District Court decision quoted directly from the Honorable Peter C. Dorsey's decision in a nearly identical case involving the very same petitioner. *Tucker v. Northeast Savings, F.A., supra.* In that case, the court found that Tucker's suit was:

> no less an attempt to convert an appeal of a state judgment into a section 1983 cause of action. The portions of the complaint which allege that plaintiff was deprived of property without due process of law by defendants' application of the rent receiver procedures of Practice Book sections 504-510 in the state foreclosure proceedings must be dismissed for lack of subject matter jurisdiction.

Tucker v. Northeast Savings, F.A., 675 F.Supp. at 767. The District Court in this case concluded that "Tucker had 'full opportunity to present his claims' during the appellate process." Memorandum of Decision 7; A-53 (quoting *Tucker III*). Therefore, Tucker's claims for relief from the consequences of the state court judgments were dismissed for lack of subject matter jurisdiction.

The lower court also held that Tucker lacked standing to challenge the facial validity of Connecticut Practice Book §§ 504-510 because his own complaint stated that he no longer owned the property. Complaint ¶ 17; A-7. Thus, he lacked the requisite injury to pursue a declaratory judgment of the facial validity of the challenged Practice Book sections. Memorandum of Decision 8; A-54.

A. The Second Circuit Decision Does not Conflict with Other Circuits

Petitioner cites no other Court of Appeals decisions, much less contrary ones, reviewing Connecticut Practice Book §§ 504-510. The petitioner has made a disingenuous argument that the District Court's decision in this case conflicts with either The Ninth Circuit Court of Appeals or the District of Columbia Court of Appeals, citing *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621 (9th Cir. 1988) and *Ham v. Smith*, 653 F.2d 628 (D.C. Cir. 1981).

In *Karim-Parahi* a *pro se* plaintiff filed a complaint alleging claims under 42 U.S.C. §§ 1983, 1985 and 1986 against the City of Los Angeles, the Los Angeles Police Department and various of their agents and employees arising out of an earlier arrest, strip search and prosecution. He also purported to allege employment discrimination and state law tort claims.

On defendant's motion, the district court dismissed the plaintiff's complaint with leave to amend, ruling that the complaint was vague, ambiguous and unintelligible. "The court explained to Karim-Panahi that the Federal Rules of Civil Procedure require a short, concise, brief statement of your case but the court did not identify any particular deficiencies of the complaint." *Id.* at 623.

Karim-Panahi then amended the complaint which was once again dismissed pursuant to Fed. R. Civ. P. 12(b)(6). The plaintiff failed to set forth in specific language the factual allegations of his complaint. It also contained legal conclusions but no specification of any facts to substantiate the legal claims.

The Ninth Circuit Court of Appeals held that since the defects in the complaint could be cured by amendment that the district court had the obligation to advise the plaintiff of his errors and granted the plaintiff the right to amend.

Ham v. Smith simply held that before "granting summary judgment against a *pro se imprisoned* plaintiff, the district court "at a bare minimum" should give the plaintiff fair notice of the requirements of the summary judgment rule." *Ham v.*

Smith, 653 F.2d 628, 630 (D.C. Cir. 1981) (following *Hudson v. Harvey*, 412 F.2d 1091 (D.C. Cir. 1968)). The court did not expand the rule to require the court in all cases involving a pro se party and a motion for summary judgment to instruct the civil litigant in the legal standards of summary judgment and the party's requirements under Fed. R. Civ. P. 56. Rather, the court rightfully held that in cases involving *prisoners* unrepresented by counsel and subject to detainment they be given "fair notice of the requirements of the summary judgment rule." *Id.* at 1074.

Tucker alleges that, as *pro se* plaintiff,[6] he should have been given the right of amendment prior to dismissal. First, Tucker never moved the court for permission to amend his complaint. Thus it is inaccurate to say that the District Court refused to allow him to amend. Secondly, unless Tucker were to recant the judicial admission from his first complaint that he had sold the property, no amendment of language could restore to him the property interest he lacked to challenge prospectively the rent receivership rules on their face.

The petitioner's case was dismissed by the District Court on grounds of lack of subject matter jurisdiction and standing. Therefore, the decisions of the United States District Court for the District of Connecticut and the United States Court of Appeals for the Second Circuit were consistent with the Ninth Circuit and District of Columbia holdings. Neither of the

---

6 It is questionable whether the tender mercies traditionally accorded *pro se* litigants are deserved by Tucker who has appealed to the Connecticut Supreme Court, Connecticut Appellate Court or Connecticut Appellate Session at least forty-five times in the past fifteen years and in this dispute alone four times petitioned this Court for a writ of certiorari. *Tucker v. Connecticut National Bank* (this case); *Tucker I, Tucker II, Tucker III*. E.g. *Hartford Federal Savings & Loan Association v. Tucker*, 196 Conn. 172, 491 A.2d 1084 (1985); *Tucker v. Connecticut Ins. Placement Facility*, 192 Conn. 653, 473 A.2d 1210 (1984); *Burritt Mut. Sav. Bank of New Britain v. Tucker*, 183 Conn. 369, 439 A.2d 396 (1981); *Hartford Federal Savings & Loan Ass'n v. Tucker*, 181 Conn. 607, 436 A.2d 1259 (1980); *Mechanics Sav. Bank v. Tucker*, 178 Conn. 640, 425 A.2d 124 (1979); *City of Hartford v. Stanley Tucker, et al.*, 174 Conn. 792, 381 A.2d 1369 (1978).

grounds that the District Court here used for dismissal were capable of being perfected by amendment. Even if the petitioner had been denied his non-existent request to amend, it too would not have been sufficient to warrant a reversal of the case.

B. The Second Circuit Decision Does Not Conflict With The Connecticut Supreme Court

The Connecticut Supreme Court has repeatedly upheld the application of the rent receivership rules as applied to Tucker's properties. In this very same dispute the Court said:

> Since the defendant exercised his right to appeal from the appointment of the rent receiver, we are entitled to presume that he had a full opportunity to present his claims.
>
> . . . .
>
> Not only did the trial court have the authority to continue the receivership and to "modify any such order" as necessary, but also to "make any such order in the action as the exigencies of the case may require." General Statutes § 52-504; *see also* Practice Book § 509.
>
> . . . .
>
> This litigation has lasted nine years. There is no longer any reason to prolong this case into the indefinite future by allowing the defendant a roving inquiry into irrelevant matter in the subsequent proceedings. Our mandate properly interpreted in the light of prior decisions of this Court and the applicable statute directs the route to be followed.

Tucker III at 224-225.

The Connecticut Supreme Court has also rebuffed Tucker's attempts in state court to sue the rent receivers, attorneys and foreclosing parties connected with the rent receiverships placed on Tucker's properties. *Tucker v. Helco*, 13 Conn. App. 825, 539 A.2d 148, *cert. denied*, 207 Conn. 811, 541 A.2d 1241 (1988); *Tucker v. American Insurance Company*, 3 Conn. App. 397, 488 A.2d 1278, *cert. dismissed*, 196 Conn. 802 (1985); *Tucker v. Pinney*, 8 Conn. L. Trib. No. 51, p.15, 17 (1982), *aff'd*, 3 Conn. App. 678, 490 A.2d 1032, *cert. denied*, 197

Conn. 804, 499 A.2d 56 (1985); *Hartford Federal Savings & Loan Assn. v. Tucker*, 196 Conn. 172, 177, 491 A.2d 1084, *cert. denied*, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed. 2d 258 (1985).

Tucker cites no decisions of the Connecticut Supreme Court which would permit him to relitigate in this case the propriety of the conduct of the rent receivers in the underlying state court foreclosure action, which conduct was supervised and approved by the Connecticut Superior and Supreme Courts. *Tucker III* at 225. Connecticut also maintains a rule of standing which requires the plaintiff to be exposed to an actual injury of his own before he can challenge the facial validity of a legislative enactment. *Husti v. Zuckerman Property Enterprises Ltd.*, 199 Conn. 557, 508 A.2d 735 (1986). There is no conflict between the Connecticut Supreme Court and the decisions in this case of the United States District Court for the District of Connecticut and the United States Court of Appeals for the Second Circuit.

C. The Lower Court Proceedings Were Ordinary

The supervisory power of this Court is properly invoked upon a petition for writ of certiorari only when the conduct of the lower courts is totally outside the bounds of civilized judicial demeanor or conduct of the proceedings. See Supreme Court Rule 17.1.

Petitioner has not documented any such outrageous conduct by the lower courts. The procedure was quite routine. In response to plaintiff's complaint, defendants filed a motion to dismiss which on the face of the papers stated defendants' intent that it be treated as a summary judgment motion pursuant to Fed. R. Civ. P. 12(b) and 56(b). A-27. Plaintiff filed an opposing brief and his own summary judgment motion with a brief and affidavit. A-33. The District Court ruled on these motions as they were presented. Tucker gave the District Court two additional opportunities to consider the issues, by way of motion to vacate the judgment and motion for rehearing of the motion to vacate. Upon such further consideration the court declined to change its decision. Similarly at the Second Circuit level Tucker filed his main brief and a brief in opposition to

defendants' motion to dismiss and for summary affirmance. The posture of the case did not call for evidentiary hearings. No jury was involved. Inflamed passions were not and could not have been an issue. This is simply a textbook example of reasoned disposal according to standard procedure of a claim which never should have been brought.

D. No Federal Statute Is In Issue

This whole case revolves around the procedural rules of one state's courts. Plaintiff has not challenged any federal statute. Neither novelty nor the characterization of an "important question of federal law" applies to the principle that Tucker may not relitigate in federal court whether the state court judges were correct in their supervision of the rent receivers on property formerly owned by Tucker. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). This case in no way involves any of the issues or conflicts set forth in Supreme Court Rule 17.1.

The respondents recognize that Rule 17.1(a)-(c) is not intended to circumscribe the scope of this Honorable Court's discretion in deciding to entertain a petitioner's writ for certiorari. However, petitioner identifies no "special and important" reason to grant this petition. Moreover, the petitioner's previous attempts to bring these same issues to this Court by way of petition for writ of certiorari were denied.[7] *Tucker I*; *Tucker II*; *Tucker III*.

---

7 For example, among the issues raised by Tucker in his 1985 Petition for Writ of Certiorari in Tucker III are:

Did the Connecticut Supreme Court rule contrary to the opinion of this Court in appointment of substitute rent receiver WITHOUT DUE NOTICE including notice of state and federal defenses

Did the Connecticut Supreme Court rule contrary to the opinion of this court in appointment of substitute rent receiver WITHOUT DUE NOTICE including notice of speedy mechanism to terminate with damages and counsel fees a reteiver incompetent or negligent

Did the Connecticut Supreme Court rule contrary to the opinion of this court in appointment of substitute rent receiver WITHOUT EQUAL PROTECTION by denying to Owner right to post equal bond and be rent receiver of property he owns

II. THE PETITIONER HAS FULLY LITIGATED THE CONSTITUTIONALITY OF CONNECTICUT PRACTICE BOOK SECTIONS 504-510

It is extraordinarily difficult to decipher Tucker's petition for a writ of certiorari due to its lack of appropriate form and haphazard drafting. The petitioner has apparently once again alleged that he was precluded from raising a constitutional challenge to Connecticut Practice Book §§ 504-510 during the decade of litigation in the state judicial system. This is simply not the truth. The Connecticut Supreme Court held that Tucker had the "full opportunity to raise his claims during the trial and appellate process." *Tucker III* at 224. Moreover, the Connecticut Supreme Court has specifically held that the rent receiver rules are constitutional. *Hartford Federal Savings & Loan Ass'n v. Tucker*, 196 Conn. 172, 176, 491 A.2d 1094, *cert. denied*, 474 U.S. 920, 106 S.Ct. 250, 88 L.Ed. 2d 258 (1985).

> Due process does not mandate a particular procedure but rather requires only that certain safeguards exist in whatever procedural form is afforded. *See Fermont Division v. Smith*, 178 Conn. 393, 397, 423 A.2d 80 (1979), and cases cited therein. The fourteenth amendment prohibits the state from denying any person life, liberty or property without due process of law, but this adds nothing to the rights of one citizen as against another. *United States v. Cruikshank*, 92 U.S. 542, 554, 23 L.Ed. 588 (1876). The amendment "in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives rea-

---

Did the Connecticut Supreme Court rule contrary to the opinion of this Court by appointment of substitute rent receiver WITHOUT DUE PROCESS consisting of notice and hearing as to qualifications

Did the Connecticut Supreme Court rule contrary to the opinion of this Court in permitting a re-litigation of mortgage ALREADY MERGED INTO JUDGMENT

Did the Connecticut Supreme Court rule contrary to the opinion of this Court DENYING EQUAL PROTECTION by refusing Petitioner a hearing on Set Off of claims against the Bank

> sonable notice and affords fair opportunity to be heard before the issues are decided." *Iowa Central Ry. Co. v. Iowa*, 160 U.S. 389, 393, 16 S.Ct. 344, 40 L.Ed 467 (1896). That opportunity is amply afforded by the rules under attack. In the first place, every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and no appointment may be made without notice unless sufficient cause appears. Practice Book Section 506. Moreover, there is no violation of due process when a party in interest is given the opportunity at a meaningful time for a court hearing to litigate the question of appointment of a receiver. In view of these safeguards we find unpersuasive the defendant's argument that the rules for appointment of a receiver of rents are unconstitutional.

Hartford Federal Savings & Loan Ass'n v. Tucker, 196 Conn. at 176. See also *Tucker III* at 223.

The District Court recognized that even if Tucker didn't explicitly challenge Practice Book §§ 504-510 on his current constitutional grounds during the life span of the state court case, "there was nothing before this court to indicate that Tucker was precluded from doing so." Memorandum of Decision 7; A-53. Under the doctrine of *res judicata*, or claim preclusion, a judgment is final not only as to every matter which was offered to prove the claim, but also as to any other admissible matter which might have been offered for that purpose. *Cromwell v. County of Sac*, 94 U.S. 351, 352-53, 24 L.Ed. 195 (1876). *In Friarton Estates Corp. v. City of New York*, 681 F.2d 150 (2d Cir. 1982), the Second Circuit Court of Appeals held that where the constitutional claims presented in a § 1983 action (arising, incidentally, from foreclosure suits) had already been made both in state appellate proceedings and by petition for certiorari to the United States Supreme Court, the contentions were *res judicata*, warranting dismissal of the § 1983 action. The court wrote:

> All the constitutional contentions. . . were advanced not once but time and time again at each of the three levels of

> the New York court system and on petition for certiorari to the United States Supreme Court. It is of no consequence whether the district court or this court agrees or disagrees with the determinations of the New York courts on issues fully raised before and necessarily decided by them. *Res judicata* protects wrong decisions as well as right ones. It is immaterial that the questions were constitutional in character. . . or that they are now asserted under 42 U.S.C. § 1983. . .

Friarton Estates Corp. v. City of New York, 681 F.2d at 158. This Court has confirmed the view that state court decisions on constitutional issues are *res judicata* of the same issues raised in federal § 1983 actions. *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 83-85, 104 S.Ct. 892, 79 L.Ed.2d 56 (1983), *aff'g*, 703 F.2d 564 (6th Cir. 1982). *See also Allen v. McCurry*, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). Therefore, the District Court correctly dismissed the case for lack of subject matter jurisdiction and the United States Court of Appeals for the Second Circuit did not err in affirming the dismissal.

The petitioner has also claimed that the case of *Nelson v. Regan*, 560 F. Supp. 1101 (D. Conn. 1983), *aff'd on other grounds*, 731 F.2d 105 (2d Cir.), *cert. denied*, 469 U.S. 853, 105 S.Ct. 175, 83 L.Ed.2d 110 (1984) changed the law on rent receivership in early 1983 by imposing a new due process requirement, specifically, that the defendant be given notice of defenses. The District of Connecticut held that where a constitutionally protected property right is in jeopardy due to government action, "[a] clear and detailed deprivation notice, specifying the possible defenses and procedures for asserting those defenses is necessary to afford due process protection. . ." *Nelson v. Regan*, 560 F.Supp. at 1107; *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Inasmuch as Tucker's Connecticut Supreme Court appeal was not argued until February, 1985, he was constructively aware of this change in the law and could have asked the court

to aprise him of any available defenses of which he might otherwise have been ignorant. *Tucker III.* See *Tucker v. Northeast Savings, F.A., supra* at 766. In any case, the petitioner never identified any defenses of which he was unaware and should have been notified. It is simply not credible that the petitioner was really unaware of applicable defenses at the time the receivers of rent were appointed or the numerous occasions when he sought to have them discharged. Case law of long standing clearly set out those defenses. *See Silver v. Kingston Realty Corp.*, 114 Conn. 349, 158 A. 889 (1932) (sufficiency of foreclosing party's security in property); *Williams v. Robinson*, 16 Conn. 517 (1844) (foreclosing party in possession or legally capable of gaining possession of property). As a habitual *pro se* litigant and not one of those who are "relatively uneducated and uninformed about their legal rights" that *Nelson v. Regan, supra*, aims to protect, Tucker surely was aware of, or had reasonable access to, these cases. Accordingly, even if *Nelson v. Regan* were applicable, the appellant could not and has not demonstrated the lack of notice which that case proscribes.

The petitioner also claims that the District Court erred in ruling that Tucker lacked standing to seek declaratory relief on the facial validity of Practice Book §§ 504-510. Specifically, the court held:

> Tucker has fully litigated the foreclosure matter in state court and has unsuccessfully sought review in the United States Supreme Court. . . (b)ecause there is no allegation that prospective application of sections 504-510 will cause the plaintiff reversable harm, Tucker lacks the "distinct and palpable injury" that is a necessary underpinning for standing to pursue a facial challenge to the rent receiver procedure. *106 Mile Transport Associates v. Koch*, 656 F. Supp. 1474, 1480 (S.D.N.Y. 1987) (quoting *Allen v. Wright* 468 U.S. 737, 752 (1984)).

Memorandum of Decision 9; A-54-55. Tucker admits that he sold the property at private sale in April, 1986. Complaint ¶ 17; A-7; Memorandum of Decision 9n.3; A-55. There is no allegation that prospective application of the rent receiver rules will

cause him any actual and imminent injury from these defendants. Therefore, it is clear that the petitioner has no standing to challenge the constitutionality of Connecticut Practice Book §§ 504-510. See, *Northeast Bancorp, Inc. v. Woolf*, 576 F. Supp. 1225, 1232 (D. Conn. 1983), *aff'd*, 742 F.2d 1439 (2d Cir. 1984). The cases cited by the petitioner in the petition for a writ of certiorari fully support the position of the respondents. See Petition p. 18-20.

III. THE ROOKER-FELDMAN ABSTENTION DOCTRINE PRECLUDED SUBJECT MATTER JURISDICTION TO THE UNITED STATES DISTRICT COURT

The petitioner also alleges that the abstention doctrine is not applicable in this case. Petition p. 21. The respondents did not raise the abstention doctrine in the District Court or the Court of Appeals. However, as the abstention doctrine would further support the District Court decision, the respondents present the following discussion.

In instituting this § 1983 suit in the federal District Court, the plaintiff sought a ruling that the Supreme Court of Connecticut, in holding the rent receiver rules constitutional as applied and on their face, was wrong. He sought review of the decision of a state court. The proper means of obtaining such a review are by petition for writ of certiorari or by direct appeal to the United States Supreme Court.[8]

This Court has delineated the jurisdictional boundaries: "[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this court." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). Petitioner himself was a party to most of the recent cases upholding the constitutionality of the rent receiver rules. *Hartford Federal Savings & Loan Ass'n v. Tucker*, *supra*, and cases cited. Thus, he has had, and

---

8 The United States Supreme Court has, in fact, denied certiorari, in this dispute three times. See 445 U.S. 904, 100 S.Ct. 1079, 63 L.Ed.2d 319 (1980); 449 U.S. 956, 101 S.Ct. 363, 66 L.Ed.2d 1221 (1980); 474 U.S. 845, 100 S.Ct. 135, 88 L.Ed.2d 258 (1985)

in many cases has taken, the opportunity to seek direct review of the state court decisions which he now seeks to collaterally attack.

In *Rooker v. Fidelity Trust Company*, 243 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) this Court refused to permit a losing state court litigant to invoke federal jurisdiction to attack a state court judgment on the ground that it had unconstitutionally misapplied state law. The Court held that an appeal through the state courts to the Supreme Court constituted the exclusive procedure by which the judgment might be reviewed for constitutional error.

> If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding . . . Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character . . . To do so would be an exercise of appellate jurisdiction.

Rooker v. Fidelity Trust Co., 263 U.S. at 415-416.

In *Feldman*, this Court repeated the principles of Rooker, stating:

> The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review the final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court. See 28 U.S.C. § 1257. See *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1141 (2d Cir. 1986).

District Of Columbia Court of Appeals v. Feldman, 460 U.S. at 476.

A disclaimer of jurisdiction by a federal district court under *Feldman* is not a discretionary extension of the *Younger* abstention doctrine. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 699 (1971). The *Younger* doctrine is intended only to avoid the risk of federal judicial interference with *ongoing* state proceedings. As all state proceedings have long been concluded in the instant case, *Younger* abstention is simply inapplicable. *American Disposal Services, Inc. v. O'Brien*, 1988 U.S. App. LEXIS 1805, slip opinion, p. 8 (2d Cir. Feb 8, 1988). See also *Younger v. Harris*, 401 U.S. 37 (1971).

Feldman, on the other hand, applies independently of *Younger*, and bars federal subject-matter jurisdiction in this case. Unlike *Younger*, *Feldman* enunciates a *mandatory* construction of 28 U.S.C. § 1257, which sets forth the various avenues for review, of state supreme court decisions by the United States Supreme Court. Thus, the Second Circuit Court of Appeals held that the doctrine of *Feldman* and its ancestor, *Rooker v. Fidelity Trust Co.*

> stems from recognition that (1) state courts are just as obligated and competent as federal courts to decide federal constitutional questions, . . . (2) a path is available through the state appellate system to the Supreme Court, and that (3) waste of judicial resources and unnecessary friction between state and federal courts might ensue if a federal court intervened to overrule a state court decision. . .-.

Texaco, Inc. v. Pennzoil Co., 784 F.2d 1133, 1142 (2d Cir. 1986), *rev'd on other grounds*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (citations omitted). The court concluded that "[t]he severability of these claims by [state] appellate courts and ultimately by the Supreme Court pursuant to 28 U.S.C. Section 1257 *precludes* an inferior federal court from exercising jurisdiction over them." *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d at 1143 (emphasis added).

It follows, *a fortiori*, that past review (as well as prospective reviewability) by the State of Connecticut Supreme Court also precludes subject-matter jurisdiction. As the Second Circuit

Court of Appeals noted in *Pennzoil*, "the state court judgments in *Rooker* and *Feldman* had survived appeal in the state court system." 784 F.2d at 1142. Indeed, while the *Younger* abstentation doctrine may act only to *delay* federal district court subject-matter jurisdiction pending the completion of the state court proceedings, the *Rooker-Feldman* principle absolutely *forecloses* such jurisdiction where such proceedings have already been concluded holding the challenged statute or behavior constitutional and United States Supreme Court review was either available or had been denied. *Compare Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 1528, 95 L.Ed.2d 1 (1987) *with Texaco, Inc. v. Pennzoil Co.*, *supra*, 784 F.2d at 1141-43.

Neither the respondent, the District Court nor the Second Circuit Court of Appeals relied upon the *Rooker-Feldman* doctrine. However, it supports the District Court's decision that the court lacked subject matter jurisdiction over petitioner's damages claims arising from the conduct of the rent receivers supervised by the Connecticut courts.

CONCLUSION

For nearly a decade and a half in every possible forum Stanley V. Tucker has challenged the appointment and conduct of court appointed rent receivers on his property in foreclosure. The United States District Court properly concluded that he has had his day in court and that it is not the function of the federal trial court to review the decisions of the Connecticut Supreme Court approving the conduct of those receiverships and upholding the validity and constitutionality of the Connecticut Practice Book rules governing receiverships. Having sold the property in question, Tucker has no present or prospective risk of being subjected by these defendants to the receivership rules. Thus, he lacks standing to challenge the facial constitutionality of those rules and the District Court correctly so held. The United States Court of Appeals for the Second Circuit found so little merit in Tucker's claims that it summarily affirmed the District Court's decision.

Tucker now petitions to have this court review his case. As discussed above, the decisions of the Second Circuit and District Court present no conflict between the Circuits nor with the Connecticut Supreme Court nor any new, important question of federal law which would justify acceptance of this case. Petitioner simply disagrees with the numerous courts which have ruled against him.

Respondents, Connecticut National Bank, Neil E. Atlas, Bourke G. Spellacy, and Updike, Kelly & Spellacy, P.C., respectfully request that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit be denied.

Respectfully submitted,

DEFENDANTS-RESPONDENTS,
Connecticut National Bank and
Neil E. Atlas

By: /s/ Bourke G. Spellacy
BOURKE G. SPELLACY, ESQ.
KAREN P. BLADO, ESQ.
MORTON H. LIBBEY, JR., ESQ.
Updike, Kelly & Spellacy, P.C.
P.O. Box 31277
One State Street
Hartford, Connecticut 06103
(203) 548-2600

DEFENDANTS-RESPONDENTS,
Connecticut National Bank,
Neil E. Atlas, Bourke G. Spellacy, and
Updike, Kelly & Spellacy, P.C.

By: /s/ Karen P. Blado
KAREN P. BLADO, ESQ.
MORTON H. LIBBEY, JR., ESQ.
Updike, Kelly & Spellacy, P.C.
P.O. Box 31277
One State Street
Hartford, Connecticut 06103
(203) 548-2600